In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-555

GARY LEE MCINTYRE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of willfully refusing to submit to induction into the armed forces, in violation of 50 U.S.C. App. 462(a). He was sentenced to the custody of the Attorney General for three years. The Court of Appeals affirmed (Pet. App. A 1).

Petitioner registered with his local board in Orange County, California, on February 5, 1963 (SSF 1, 2).

On February 15, 1965, having informed the board that he was married, petitioner was given a fatherhood (III-A) deferment (SSF 5, 11, 12). He held that classification until May 14, 1969, when the board reclassified him I-A upon hearing that he had been divorced for some two years (SSF 11, 20, 23). On November 3, 1969 petitioner was ordered to report for induction on November 25, 1969 (SSF 29).

The day before the scheduled reporting date, on November 24, 1969, the board received a letter from petitioner requesting, for the first time, the Special Form for Conscientious Objectors (SSS Form 150). The letter stated (SSF 32), in part, "I have sat down in the last several days and thought about this matter a great deal and have finally made up my mind." The form was mailed to petitioner and his induction was postponed. He promptly completed and returned the form to the board, and, shortly thereafter, he was notified that the board had refused to reopen his classification since petitioner had not demonstrated "a change in status resulting from circumstances over which [he] had no control" (SSF 38).

He was ordered to report for induction on February 17, 1970 (SSF 11, 39). Petitioner did report, but, when called upon to take the symbolic step forward, he refused. The present indictment and conviction followed, and the court of appeals affirmed (Pet. App. A 1), relying on this Court's decision in *Ehlert* v. *United States*, 402 U. S. 99.

Petitioner asks this Court to reconsider its decision in *Ehlert* v. *United States*, *supra*. The various argu-

ments advanced by petitioner's counsel are the same that he has made in *Farrell and Roy* v. *United States*, No. 71-77, this Term, certiorari denied, October 12, 1971; *Taggart* v. *United States*, No. 70-341, this Term, certiorari denied, October 12, 1971; and *Kilty* v. *United States*, No. 71-290, this Term, certiorari denied, November 9, 1971. For the reasons stated in the government's responses in those cases, there is no cause for further review in the present case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1971.

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